

**LATE REVISIONS -
REGIONWIDE MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s)
GENERAL PERMIT
Regional Water Quality Control Board, Central Valley Region
Board Meeting – 23/24 June 2016
ITEM # 9**

Changes to Proposed Permit and Attachments

- 1. Global change, multiple pages.**
Replace the phrase “Water Quality Focused Framework,” and “Water Quality Focused Permit Framework” with “Storm Water Management Framework.”
- 2. Global change, multiple pages.**
Replace the phrase “Performance-Based Approach” with “Pollutant Prioritization Approach.”
- 3. Global change, multiple pages.**
Replace the phrase “Prescriptive Based Approach” with “Prescriptive Approach.”
- 4. Finding 20. Page 8.**
Edit the third paragraph of Finding 20 as show below in strikeout/underline format.

The State Water Board has adopted the *Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary* (Revised December 2006) (Bay-Delta Plan). The Bay-Delta Plan establishes water quality objectives for which implementation can be fully accomplished only if the State Water Board assigns some measure of responsibility to water right holders and water users to mitigate for the effects on the designated beneficial uses of their diversions and use of water. Like all water quality control plans, the Bay-Delta Plan consists of: (1) beneficial uses to be protected; (2) water quality objectives for the reasonable protection of beneficial uses; and (3) a program of implementation for achieving the water quality objectives. Together, such beneficial uses, and water quality objectives, ~~programs of implementation, and an anti-degradation policy,~~ constitute water quality standards under the CWA, and the program of implementation includes the State’s anti-degradation policy. As a planning document, the Bay-Delta Plan prioritizes water quality control planning activities to include 1) Pelagic Organism Decline; 2) climate change; 3) Delta and Central Valley Salinity; and 4) San Joaquin River flows.

5. Section III.A., Page 16.

Add the following footnote after the sentence in section A.

For the purposes of this Order, implementation of a Storm Water Management Program in a manner consistent with the framework described in **Part V.E** satisfies the requirement to control pollutants in storm water discharges to the maximum extent practicable.

6. Section III.B.3., Page 16.

Edit paragraph number 3 as shown below of strikeout/underline format.

A Permittee requiring additional time to meet an applicable WLA in **Attachment G** that implements a "new, revised, or newly interpreted" water quality objective, as that term is defined in the Compliance Schedule Policy,²⁵ may propose a compliance schedule as part of its SWMP or separately at a later date. Central Valley Water Board approval of a SWMP operates as approval and adoption of any compliance schedules contained therein. A Permittee timely implementing a duly approved compliance schedule shall be deemed in compliance with **Parts III.B.1 and III.B.2** for the WQBELs covered by that compliance schedule. The Permittee's proposed compliance schedule shall include a justification satisfying the following criteria:

7. Section III.B.4., Page 17.

Remove paragraph number 4, and renumber section accordingly.

8. Section III.B.6., Page 18.

Remove paragraph number 6.

9. Section V.C.3., Page 21.

Edit paragraph number 3 as shown below of strikeout/underline format.

For pollutant-water body combinations addressed in a TMDL, ~~compliance with applicable TMDL requirements~~ a Determination of Compliance in accordance with **Attachment G** shall constitute compliance with **Part IV**.

10. Section V.C.5.d., Page 22.

Edit paragraph d. as shown below in strikeout/underline format.

To be deemed in compliance with this **Part V.C.5**, the Permittee must submit its revised SWMP and RAA to the Executive Officer within six (6) months of detecting or receiving notice from the Central Valley Water Board (whichever is earlier) that the water quality milestone or final date

of attainment was not met.³⁴ The Permittee may request an extension for the submittal of the SWMP and RAA. Such requests must be made in writing and include a justification for the extension and proposed dates of submittal. Extensions may be approved at the discretion of the Executive Officer, but they shall not become effective until affirmatively approved. Notwithstanding the Permittee's compliance with the procedures in this **Part V.C.5**, the Permittee will be deemed in violation of this Order if the Executive Officer determines that the Permittee's failure to achieve the water quality milestone or final date of attainment resulted from failure to fully implement its SWMP. Such determination will be delivered in writing.

11. Section V.E., Page 25.

Add the following text to the end of the first paragraph in section E.

Under either approach, a Permittee that implements its Storm Water Management Program in a manner fully consistent with the framework described in this **Part V.E** satisfies the requirement in **Part III.A** to control pollutants in storm water discharges to the maximum extent practicable.

12. Attachment F, Section II.D.1., Page F-10.

Edit the first paragraph in section 1 as shown below of strikeout/underline format.

The CWA requires the Central Valley Water Board to establish water quality standards for each water body in its region. Water quality standards include beneficial uses, and water quality objectives and criteria that are established at levels sufficient to protect beneficial uses. The program of implementation includes the State's, and an antidegradation policy to prevent degrading of waters. The Central Valley Water Board has adopted the Water Quality Control Plan for the Sacramento and the San Joaquin River Basins, Fourth Edition (Revised June 2015) and Water Quality Control Plan for the Tulare Lake Basin, Second Edition (Revised January 2015) (Basin Plan). Each Basin Plan designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters in the Central Valley Region. In addition, the Basin Plan implements State Water Board Resolution No. 88-63, which established state policy that all waters, with certain exceptions, should be considered suitable or potentially suitable for municipal or domestic supply. Beneficial uses applicable to the surface water bodies that receive discharges from the MS4s within the Central Valley Region generally include those listed below:

13. Attachment F, Section II.D.3., Page F-12.

Edit the first paragraph in section 3 as shown below of strikeout/underline format.

Federal regulations (40 CFR 131.12) require that the states ~~water quality standards include an~~ develop and adopt an antidegradation policy consistent with the federal antidegradation policy and identify the methods for implementing such a policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16 ("Statement of Policy with Respect to Maintaining the Quality of the Waters of the State"). State Water Board Resolution No. 68-16 complies with the federal antidegradation policy where the federal policy applies under federal law.

14. Attachment F, Section V., Page F-28.

Edit Footnote 63 as shown below in strikeout/underline format.

CWC section 13263. The term "water quality standards" encompasses the beneficial uses of the water body and the water quality objectives (or "water quality criteria" under federal terminology) that must be met in the waters of the United States to protect beneficial uses. States also must implement w~~Water quality standards in accordance with also include the~~ federal and state anti-degradation policies.

15. Attachment F, Section VI.A., Page F-32.

Edit the third paragraph in section A as shown below in strikeout/underline format.

This Order includes programmatic requirements in six areas pursuant to 40 CFR section 122.26(d)(2)(iv) as well as numeric design standards for storm water runoff from new development and redevelopment consistent with the federal MEP standard (see State Water Board Order WQ 2000-11). This Order also includes protocols for periodically evaluating and modifying or adding control measures, consistent with the concept that MEP is an evolving and flexible standard. A Permittee's implementation of a Storm Water Management Program in a manner fully consistent with the framework described in Part V.E satisfies the requirement in Part III.A to control pollutants in storm water discharges to the maximum extent practicable.

16. Attachment F, Section VI.B.3., Page F-38.

Replace the entire second paragraph in section 3 with the following text, and move the new text to a new paragraph at the end of section 3:

If the Permittee believes it requires additional time beyond a TMDL's final compliance date to meet the applicable WLA, and that WLA does

not implement a “new, revised, or newly interpreted” water quality objective as defined in the Compliance Schedule Policy, the Permittee may request a time schedule order pursuant to California Water Code section 13300 for the Central Valley Water Board’s consideration.

17. Attachment F, Section VII.B.8., Page F-64.

Remove the phrase, “regardless of size or purpose of development” from the first sentence in paragraph number 8.

18. Attachment F, Section VII.B.8., Page F-66.

Edit footnote 102 as shown below in strikeout/underline format.

Higher intensity flows can loosen sediment within the MS4’s Jurisdictional Runoff Area and cause the MS4 to discharge the sediment into waters of the United States. Additionally, higher intensity flows from an MS4 can loosen sediment that had settled in the bed and/or banks of waters of the United States and which would have remained settled if not for increased flows from the MS4. In this manner, higher intensity flows from an MS4 can discharge sediment into waters of the United States even when the sediment is not physically present in the MS4’s effluent. ~~See Conway v. State Water Resources Control Board (2015) 235 Cal.App.4th 671, ___, 185 Cal.Rptr.3d 490, 493-494 (“[O]ne can discharge a pollutant from one part of the receiving waters into another part of the same receiving waters.”).~~

19. Attachment G, Page G-14. Sacramento and San Joaquin Delta pesticides TMDL.

Remove “County of Sacramento” from the Municipality column.

20. Attachment G, Page G-16. Sacramento and Feather Rivers pesticides TMDL.

Remove “County of Sacramento” from the Municipality column.

Changes to Response to Comments

1. MS4 Permittee Comment #1. Page 4.

Modify the Response by adding the following sentence at the end of the paragraph:

However, the Order has been revised to include clarifying language regarding how the board will determine a Permittee’s compliance with MEP.

2. MS4 Permittee Comment #4. Page 5.

Modify the Response by adding the following sentence at the end of the second paragraph:

Under present circumstances, the water quality objectives associated with those TMDLs meet the Compliance Schedule Policy's definition of a "newly interpreted water quality objective."

3. MS4 Permittee Comment/Response Table, #5. Page 7.

Edit the Response as shown below of strikeout/underline format:

Central Valley Water Board staff ~~does not agree~~. This Finding has been revised to clarify and accurately describe the relationship between water quality standards and antidegradation policies. e language in the Tentative Order is consistent with the definition of "water quality standard" in Title 40, section 131.3 of the Code of Federal Regulations. It is also consistent with the definitions section in EPA's NPDES Permit Writer's Manual, which defines "antidegradation," in pertinent part, as: "A policy developed and adopted as part of a state's water quality standards that ensures protection of existing uses and maintains the existing level of water quality where that water quality exceeds levels necessary to protect fish and wildlife propagation and recreation on and in the water. ..." See EPA, NPDES Permit Writer's Manual (2010), Appendix A, ~~available at:~~

https://www.epa.gov/sites/production/files/2015-09/documents/pwm_app-a.pdf

~~In contrast, Clean Water Act section 303(c) does not contain a statutory definition of "water quality standard," but rather describes the procedure for promulgating a water quality standard.~~